

**COMPLAINT INVESTIGATION
WASHOE COUNTY SCHOOL DISTRICT
(#WA110107)**

INTRODUCTION

On November 1, 2007, the Nevada Superintendent of Public Instruction received a complaint dated October 1, 2007, from the aunt of a student with disabilities alleging violations in the special education program in the Washoe County School District (WCSD). An investigation team was appointed to examine the allegations that the WCSD from April 28, 2006, through January 30, 2007, did not implement the student's Individualized Educational Program (IEP). Specifically, the allegations were that WCSD failed to:

1. Implement objectives #1-#3 for the student's behavior management goals
2. Provide resource support for written expression
3. Allow the student to go to the resource room for assistance on assignments
4. Allow the student to spend recess in the resource room
5. Provide direct counseling for 20 minutes per week
6. Develop any counseling goals

COMPLAINT ISSUE

Part B of the Individuals with Disabilities Education Act (IDEA), Federal Regulations at 34 CFR §300.153(c) specify that a "complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received" The complaint correspondence was received by the NDE on November 1, 2007. Therefore, in accordance with federal regulations, the NDE did not have jurisdiction to investigate the allegations of violations that occurred prior to November 1, 2006.

The allegations in the complaint, clarified by a review of the documents and interviews, raised the following issue under the jurisdiction of the NDE:

ISSUE: Whether WCSD implemented the student's 10/31/06 IEP from November 1, 2006, through January 30, 2007, with regard to:

- a) Objectives #1-#3 for the goal of improving behavior management skills;
- b) Providing resource support for the written expression goal and allowing the student to go to the resource room for assistance on assignments and at recess time; and
- c) Related service of counseling.

PERSONS INTERVIEWED

The investigation team interviewed the following persons:

- Principal
- Regular education teacher
- Resource teacher
- School counselor
- Program consultant
- Special education area administrator (area administrator)
- 1:1 instructional aide (aide)
- Aunt

DOCUMENTS REVIEWED

The investigation team reviewed the following documents:

- Authorization for aunt to act on behalf of student
- Annual IEP dated 4/27/06
- 6/6/06 IEP revision
- Parent Consent and Agreement form dated 10/11/06
- IEP revision dated 10/31/06
- Behavior Plan
- IEP revision dated 1/30/07
- Letter to WCSD staff and aunt from teacher dated 12/11/06
- School counselor notes regarding observation dated 1/16/07
- School counselor reports from 11/7/06 through 1/19/07
- Aide notes dated 1/24/07
- WCSD memo dated 12/14/06
- WCSD letter to aunt dated 1/19/07
- Progress reports for 2nd, 3rd and 4th quarters of 2006/2007 school year
- Attendance records from 11/1/06 through 1/30/07

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- Individuals with Disabilities Education Act (IDEA) Regulations, 34 CFR Part 300
- *Van Duyn v. Baker Sch. Dist.* (9th Cir., September 6, 2007, No. 05-35181)
- Ogden Sch. Dist., SEA, November 3, 1997, 27 IDELR 534, citing *Mather v. Hartford Sch. Dist.*, 928 F. Supp. 437 (D. Vt. 1996)

FINDINGS OF FACT

This investigation involved a special education student who was enrolled in WCSD with placement in a regular class and a resource class. A review of documents as well as interviews with the principal, resource teacher, regular education teacher, school counselor, area administrator, aide, program consultant, and the student's aunt revealed the following facts.

The student had a 10/31/06 IEP in effect through the period of time covered by this complaint. Relevant provisions are described below.

The aunt reported that she believed from verbal reports of the student, discussions with the staff, notes of the aide dated 1/24/07 (Aide Notes), notes of the school counselor dated 1/16/07 (Counselor Notes), and a letter written by the regular education teacher dated 12/11/06 (Teacher Letter), that the student's IEP was not implemented in the areas of the behavior management objectives, resource room support, and counseling.

The 12/11/06 Teacher Letter consisted of a description of the problems the student had in school, concerns the teacher had for the safety and learning of the student, concerns the teacher had for the other children, and the teacher's belief that the student needed a different placement.

The aide reported that the Aide Notes, taken on 1/24/07 during one day of observation, did not include everything the teachers said to the student, but described the aide's observation of the student's behaviors.

The counselor reported that the 1/16/07 Counselor Notes, made over one 30-minute observation, were focused on describing the student's behaviors, not on describing everything that was said by the teacher.

WCSD and the aunt agreed that the student did not make progress in the area of behavior management prior to 1/31/07, when the student began attending school in a new placement. The area administrator and the aunt reported, and progress reports confirm, that subsequent to the change of placement the student was doing better and making progress.

Behavior Management Objectives

The 10/31/06 IEP had three objectives for behavior management that read as follows:

1. "During times of frustration, the teacher will get eye contact from the student and say, 'Stop. Think. Good choice, poor choice,' while using hand gestures to refocus the student. The student will respond appropriately to the situation ... 90% of the time on 8 out of 10 days."
2. "During times of frustration, the student will ask the teacher to leave the classroom and to go to the resource room or other scheduled place in the general education room ... 90% of the time on 8 out of 10 days."
3. "The student will be reinforced for demonstrating good behavior as written in the behavior plan, 90% of the time on 8 out of 10 days."

The behavior plan referenced by the 10/31/06 IEP required that the student be reinforced for demonstrating good behavior by receiving specific positive feedback, Sponge Bob stickers, and Sponge Bob prizes.

The regular education teacher, the resource teacher, and the aide reported that they implemented the first objective when the student was frustrated in the resource room and in the regular classroom by getting eye contact, repeating the words "stop, think," and using hand gestures say "good choice, poor choice" as appropriate to the student's response. If the student did not respond to that behavior management intervention, the student's behavior was ignored for a short period of time if it was not disruptive to the classroom before other consequences were implemented.

The principal, the regular education teacher, the special education teacher, the school counselor, and the aide all reported that any request of the student to go to the resource room or any other place in the general education classroom when frustrated was honored. The Counselor Notes and the Aide Notes describe the student retreating to different parts of the classroom when frustrated.

The regular education teacher, the resource teacher, and the aide reported that the student had a "good citizenship" chart that was kept for the student on a daily basis. The resource teacher reported that she monitored the chart with the regular education teacher, and that the student received Sponge Bob points and Sponge Bob rewards for displaying appropriate behaviors per the behavior plan and IEP. Other rewards suggested by the aunt were also offered to the student. The regular education teacher, the resource teacher, and the aide reported that the student often did not respond positively to the rewards.

The regular education teacher and the special education teacher reported that as of the time the student's placement was changed, the student had not yet achieved the criteria of responding appropriately 90% of the time on 8 out of 10 days for any of the three behavior management objectives.

Resource Room Support and Recess

The 10/31/06 IEP required that the student be allowed to go to the resource room daily for: 1) recess; 2) assistance on tests and assignments; and 3) assistance in maintaining appropriate behavior. This provision for resource room support was triggered at the request of the teacher and/or the student. In addition, the IEP required that the student would receive assistance with written expression for 30 minutes, 4 times per week in the resource room.

The principal, the regular education teacher, the resource teacher, the counselor, and the aide reported that whenever the student requested permission to go to the resource room for assistance it was granted. The regular education teacher also reported that she recommended the student go to the resource room whenever it appeared that the student needed help, although the student did not always choose to go.

The principal reported that there were three recess periods a day. The regular education teacher, the resource teacher, and the aide reported that whenever requested, the student went to the resource room for recess periods.

The Aide Notes from the observation on 1/24/07 indicate the aide told the student that the student's work had to be completed before the student could go to the resource room for morning recess. The aide reported that as best as he could remember, the student did go to the resource room for morning recess on the day he made that statement to the student, and that the student was always allowed to go to the resource room at recess during the few weeks he worked with the student. The aide also reported that the behaviors he described in the Aide Notes with regard to behavior during recess after lunch was behavior that actually occurred in the resource room, because the student had requested to go to the resource room for recess.

The resource teacher reported that the student received assistance with written expression in her classroom 30 minutes per day, 4 times per week during the first instructional period of the day.

Counseling

The 10/31/06 IEP required twenty minutes per week of direct and consult counseling for the student as a related service. There were no specifications about the allocation of time between direct and consult counseling services.

Prior to the 10/31/06 IEP meeting, the resource teacher reported that she had a discussion with the aunt about the possibility of providing 20 minutes of direct counseling to the student each week and developing specific counseling goals for the student. That discussion was memorialized on a Parent Agreement Form (Form) dated 10/11/06. The Form was sent home for the aunt's signature but not returned to the school. The aunt reported that she believed that the 10/11/06 discussion and the Form obligated the school to provide the services discussed with the resource teacher. However, the items discussed were never incorporated into an IEP provision.

Documents confirm that the counselor provided direct and/or consult services to the student each week the student attended school during the time period covered by the complaint. Consult services only were provided on separate weeks as follows: 11/7, 11/29, 1/8, 1/16, 1/19, and 1/23. On 12/8 the counselor provided direct services only. On 11/13, 11/22, 12/6, 12/22 and 1/24 the counselor provided direct counseling to the student in addition to consult services. The counselor reported that the counseling services provided were for at least 20 minutes a week.

CONCLUSIONS OF LAW AND REASONS

ISSUE: Whether WCSD implemented the student's 10/31/06 IEP from November 1, 2006, through January 30, 2007, with regard to:

- a) Objectives #1–#3 for the goal of improving behavior management skills;
- b) Providing resource support for the written expression goal and allowing the student to go to the resource room for assistance on assignments and at recess time; and
- c) Related service of counseling.

This complaint concerned allegations that WCSD did not implement the student's IEP because it failed to: 1) implement objectives #1–#3 for the student's behavior management goals; 2) provide resource support for written expression; 3) allow the student to go to the resource room for assistance on assignments; 4) allow the student to spend recess in the resource room; 5) provide direct counseling for 20 minutes per week; and 6) develop any counseling goals.

State regulations at NAC §388.281.6(g) require that the school district shall “provide the services and instruction deemed necessary for the pupil by the [IEP] committee.” However, “only material failures to implement an IEP constitute violations of the IDEA ... [and] a material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP.” *Van Duyn v. Baker Sch. Dist. 5J* (9th Cir., September 6, 2007, No. 05-35181). Further case law establishes that reasonable—not perfect—implementation of a student's IEP is consistent with federal law. *Ogden Sch. Dist., SEA*, November 3, 1997, 27 IDELR 534, citing *Mather v. Hartford Sch. Dist.*, 928 F. Supp. 437 (D. Vt. 1996). There are no federal or state regulations defining reasonableness, so the Nevada Department of Education applies a standard of reasonableness under the circumstances.

a) Behavior Management Objectives

In this case, the student's 10/31/06 IEP included three objectives for the goal of improving behavior management skills. The objectives required: 1) that the teachers get eye contact from the student during times of frustration and say “Stop. Think. Good choice, poor choice,” while using hand gestures to refocus the student; 2) that the student, when frustrated, would ask the teacher to leave the classroom and go to the resource room or other scheduled place in the general education room; and 3) that the student would be reinforced for demonstrating good behavior as written in the behavior plan.

The absence in the Aide Notes, the Counselor Notes, and the Teacher Letter of a description of what was said or happened with each student intervention does not lead to a conclusion that the interventions did not occur. The Aide Notes and Counselor Notes were one-time observations and focused on the student's behavior, not the behavior of the teachers. The Teacher Letter focused on the behavior of the student as well, in addition to her concerns about the student staying in the placement. While there were conflicting reports from the aunt and WCSD staff about whether or not the objectives were followed, the investigation team concluded from a review of the documents and interviews of WCSD staff that WCSD staff did implement the three objectives.

Although the aunt and WCSD staff agreed that the student's behavior did not improve during the three months from November 2006 through January 2007, the services that the IEP committee deemed necessary with regard to the three objectives for the behavior management goal were provided by the district during that three-month period.

Therefore, the investigation team concluded that WCSD complied with state regulations when it implemented the student's IEP from 11/1/06, through 1/30/07, with regard to implementing Objectives #1—#3 for the goal of improving behavior management skills.

b) Resource Room Support and Recess

In this case, the 10/31/06 IEP required that the student be allowed to go to the resource room daily for: 1) recess; 2) assistance on tests and assignments; and 3) assistance in maintaining appropriate behavior. This provision for resource room support was triggered at the request of the teacher and/or the student. In addition, the IEP required that the student would receive assistance with written expression for 30 minutes, 4 times per week in the resource room.

While there are conflicting reports from the aunt and the WCSD staff about whether the student was allowed to go to the resource room daily as requested, the investigation team concluded, based on the interviews with WCSD staff and a review of the notes of the regular education teacher, the counselor, and the aide that the student was allowed to go to the resource room for assistance on assignments and

during recess. Though the aide made a statement to the student, as recorded in the Aide Notes, that the student's work had to be finished before going to the resource room for recess, the student was permitted to go to the resource room for the upcoming recess period.

The student also received assistance with written expression in the resource room as required by the 10/31/06 IEP.

Therefore, the investigation team concluded that WCSD complied with state regulations when it implemented the student's IEP from 11/1/06, through 1/30/07, with regard to providing resource support for written expression, and allowing the student to go to the resource room for assistance on assignments and at recess time.

c) Related Service of Counseling

In this case, there was a discussion between the student's aunt and the resource teacher on 10/11/06 concerning the counseling services, specifically with regard to providing twenty minutes of direct counseling adding specific counseling goals. The services and goals that were discussed on 10/11/06 were not documented as IEP revisions at the time they were discussed, nor were they incorporated into the 10/31/06 IEP revision. Significantly, the 10/31/06 IEP revision was the IEP in effect during the time period covered by this complaint investigation, and its provisions controlled what the WCSD was required to implement from 11/1/06 through 1/30/07.

The 10/31/06 IEP required both direct and consult services for a total of 20 minutes a week with no further specification about the allocation of time for either the consult or the direct services. Although counseling services were provided each week, both direct and consult counseling services were not provided each week. The student was provided direct and consult services at five weekly sessions, consult services only at six weekly sessions, and direct counseling services only at one weekly session. Although this was not a perfect implementation of the 10/31/06 IEP—which would have required some amount of both direct and consult counseling services each week—the student did receive over the period of time covered by this complaint investigation a total of 20 minutes per week of counseling services, including both direct and consult services. Because the WCSD provided the total minutes of counseling service required by the IEP each week, and because the IEP did not specify how the time was to be divided between direct and consult services, the investigation team concluded that the fact that both types of services were not provided each week was a minor discrepancy in the delivery of counseling services as required by the IEP and not a material failure to implement the IEP.

Therefore, the investigation team concluded that WCSD complied with state regulations when it implemented the student's IEP from 11/1/06, through 1/30/07, with regard to the provision of the related service of counseling.